

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1453 of 2012

IN

Civil Writ Jurisdiction Case No 22005 of 2011

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1. Mahesh Kumar Sharma S/O Late Satya Narayan Sharma Posted As Assistant Professor (Mechanical Engineering Department) In Bihar College Engineering, Bhagalpur, At Present R/O Flat No. 4/C, Shree kunj Apartment, Bose Park, M.G. Road, Bhagalpur
 2. Ramchandra Mishra S/O Late Hari Nandan Mishra Posted As Assistant Professor (Electrical Engineering Department), In Bihar College Engineering Bhagalpur, At Present R/O Quarter No. O/2, Bihar College of Engineering, P.O. Sabour, Bhagalpur
 3. Mani Kant Mandal S/O Late Basudeomandal Posted As Assistant Professor (Civil Engineering Department), In Bihar College Engineering, Bhagalpur, At Present R/O Quarter No. O/3, Bihar College of Engineering, P.O. Sabour, Bhagalpur
 4. Krishnanandan Prasad S/O Late Ram Chandra Prasad Singh Posted As Assistant Professor (Civil Engineering Department), In Bihar College Engineering, Bhagalpur, At Present R/O Quarter No. O/6, Bihar College of Engineering, P.O. Sabour, Bhagalpur
 5. Dhirendra Prasad Kumar S/O Late Basudeo Kumar Posted As Assistant Professor (Mechanical Engineering Department), In Bihar College Engineering, Bhagalpur, At Present R/O Quarter No. 1, Bihar College Of Engineering, P.O.- Sabour, Bhagalpur

.... Appellant/s

Versus

1. The State Of Bihar through Chief Secretary, Govt. Of Bihar, Patna
2. The Principal Secretary, Finance Department, Govt. Of Bihar, Patna
3. The Principal Secretary, Department Of Science & Technology, Govt. Of Bihar, Patna
4. The Director, Department Of Science & Technology, Govt. Of Bihar, Patna
5. Ved Prakash Saha S/O Late Srinivas Saha Posted As Asstt. Prof. Electrical Engineering Deptt., Bihar College Of Engineering, Bhagalpur, R/O Naya Tola, Gumtino. 1, Bhagalpur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr Shivendra Kishor, Sr Advocate with
M/s Jai Kishor Poddar & Abinash Kr, Advocates

For the Respondent/s : Mr Dinbandhu Singh GP 9 with
Mr Rana Bhupendra Nr Singh, AC to GP 9

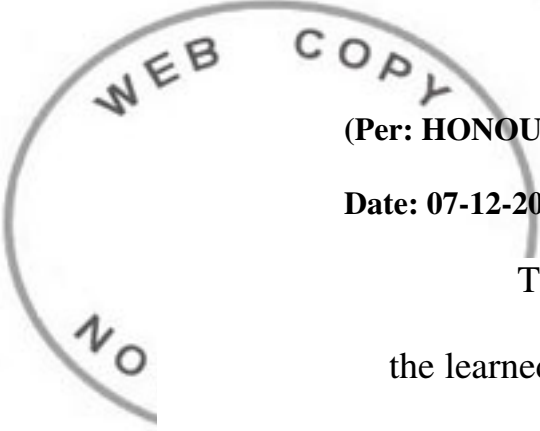
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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
And
HON'BLE JUSTICE SMT ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 07-12-2015



This intra-Court appeal arises from the judgment and order of the learned Single Judge dated 07.05.2012 passed in CWJC No 22005 of 2011 whereby the writ petition by the writ petitioners/appellants was dismissed. We have heard Shri Shivendra Kishor, learned Senior Counsel in support of the appeal and learned counsel for the State and, with their consent, this appeal is being disposed of at this stage itself.

2 The writ petitioners/appellants were Teachers in the Bihar College of Engineering at Bhagalpur which is a Government College. They are Assistant Professors and by the writ petition, they claimed time bound promotion to the post of Associate Professor on completion of 10 years of service. It is not in dispute that they were appointed in and around 1983, when in the State, for persons like the writ petitioners, there existed a time bound promotion scheme which provided for time bound promotion at the end of 10 years or 25 years as the case may be on certain conditions being satisfied. This Scheme came to an end in 1989. Engineering Colleges came to be covered by the All India Council for Technical Education (for brevity, **AICTE**) under the Act with effect from 1987. AICTE then considered the

matter on all India basis and recommended certain new pay scales as well as Career Advancement Scheme (for brevity, **CAS**). It appears, taking note from it, the State Government resolved, on 16.02.1990, that Teachers, like the petitioners, had an option which they had to exercise within 90 days. They had to specify whether they would continue in the pay scales as provided by the State Government with time bound promotion scheme or they would opt for the pay scale as fixed by AICTE and the CAS therein. Those, who would not exercise option within 90 days, were, by default, came under the AICTE scheme of pay and CAS. It appears writ petitioners/appellants represented that they were entitled to the time bound scheme under this resolution of the State Government. That not having been acceded to, they filed CWJC No 14407 of 2003. In the said writ petition, State took a stand that the time bound promotion scheme, as generally available, stood terminated with effect from 1989. Thereafter, so far as writ petitioners/appellants are concerned, their cases were considered by AICTE and pursuant to the Government Resolution dated 16.02.1990, writ petitioners/appellants not, having opted to retain themselves in the old pay scale, were not entitled to time bound promotion. However, in view of subsequent alleged clarifications, the learned Single Judge allowed the writ petition against which State preferred LPA No 754 of 2005 wherein the



Division Bench, in the intra-Court appeal, set aside the judgment and order of the learned Single Judge dated 16.03.2005 by their order dated 08.02.2010. While doing so, the Division Bench directed the State to consider the matter afresh. Accordingly, the Principal Secretary, Department of Science and Technology, which is the Nodal Department for the College of Engineering at Bhagalpur, considered the case of the writ petitioners/appellants and, by speaking order, rejected their claim. It is being aggrieved by the said order of the Principal Secretary that the present writ petition being CWJC No 22005 of 2011 was filed. In this writ application, again State took the plea that no option having been given consistent with the policy of the State Government dated 16.02.1990, the writ petitioners/appellants would not fall under the old pay scale and are not entitled to time bound promotion after 1989. Considering this and other factors, the learned Single Judge dismissed the claim of the writ petitioners/appellants. Hence, this appeal.

3 We have heard Shri Shivendra Kishore, learned Senior Counsel at length. He submits that the writ petitioners/appellants had given due option as per the Government Resolution dated 16.02.1990. We have gone through the records of the writ proceedings being CWJC No 14407 of 2013 as well as the present writ proceedings that is CWJC No 22005 of 2011 and we do not find a single line of



avermnt on behalf of the writ petitioners/appellants that they had given any such option rather there is their representation to the Department that they were entitled to time bound promotion under the scheme announced on 16.02.1990 per se and even in this representation, there is no averment that they had given option as required therein within the time frame, as prescribed. This was a fundamental fact to be pleaded and established before the right would be claimed. In spite of denial by the State in this Court in its counter affidavit, there was no rebuttal. In absence of such an averment, the very option cannot be considered to have been exercised. That being so, the prayer for grant of time bound promotion cannot be acceded to. The writ petition, in our view, therefore, was rightly dismissed.

4 While making argument, Shri Shivendra Kishore, learned Senior Counsel appearing for the writ petitioners/appellants submitted that though they have been denied time bound promotion by the State Government and they have been granted the new AICTE pay scales, they have been deprived of CAS. Again, this is a pure question of fact which had to be pleaded. Having not been pleaded, we cannot take note of it or issue any positive direction but we can only add one thing that this statement of the learned Senior Counsel itself negatives the relief as sought by them substantively inasmuch as had they opted for and were in receipt of old pay scale only then they could have got

time bound promotion. On their own admission, they are receiving new pay scale under AICTE and, thus, if at all, they are only entitled to CAS benefit in addition thereto.

5 However, we mould the relief and direct the State through the Principal Secretary, Department of Science and Technology to examine this latter part of the matter. If the writ petitioners/appellants are being given the AICTE pay scale then, alongwith it, they were entitled to CAS scheme benefit as per the Government decision dated 16.02.1990 itself. If that is so then the Secretary would grant necessary relief or else pass a speaking order why they are being denied the same, if they have been denied the same.

6 It goes without saying that the Principal Secretary, if moved within two weeks from today, would be obliged to pass appropriate orders in this regard within two months.

7 With these limited observations and directions, the Letters Patent Appeal stands dismissed.

(Navaniti Prasad Singh, J)

M.E.H./-

(Anjana Mishra, J)

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